

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

CASE NO. C03-02289-MJJ (EMC)

**[PROPOSED] STIPULATED PROTECTIVE
ORDER**

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Confidential Information," as used herein, means any information of any type, kind or character that is designated as "Confidential" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential," a party will make such designation only as to that information that it in good faith believes contains "Confidential Information."

3. (a) "Confidential Information" includes, but is not limited to, (i) proprietary technical

1 information and specifications, (ii) trade secrets (iii) confidential know-how, and (iv) proprietary
2 business and financial information and any other non-public information, the disclosure of which is
3 likely to have the effect of causing significant competitive harm to the disclosing party or party from
4 which the information was obtained. Nothing in this paragraph shall be construed to limit the
5 description of "Confidential Information" set forth in paragraph 2.

6 (b) Nothing shall be regarded as "Confidential Information" if it is information that:

7 (i) is in the public domain at the time of disclosure, as evidenced by a written document;

8 (ii) becomes part of the public domain through no fault of the other party, as evidenced
9 by a written document;

10 (iii) was in the receiving party's rightful and lawful possession at the time of disclosure,
11 as evidenced by a written document; or

12 (iv) is lawfully received by the receiving party from a third party at a later date without
13 restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving
14 party.
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16 4. "Qualified Persons," as used herein means:

17 (a) To the Court and its officers and staff, including court reporters;

18 (b) Outside attorneys of record for the parties in this litigation and employees of such
19 attorneys to whom it is necessary that the material be shown for purposes of this litigation;
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21 (c) Outside experts, consultants, advisors or investigators (collectively referred to
22 hereafter as "experts") who have signed an undertaking pursuant to paragraph 5 but only after
23 compliance with the provisions of paragraph 5 below;

24 (d) To non-party support services including, but not limited to, court reporters, outside
25 copy services, document imaging and database services, design services who have signed confidentiality
26 agreements, jury consultants who have signed confidentiality agreements, mock jurors who have signed
27 confidentiality agreements, and language translators who have signed confidentiality agreements
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1 (including support staff) as may be reasonably necessary in connection with the preparation or conduct
2 of this action;

3 (e) Anyone to whom the parties consent in writing; and

4 (f) If this Court so elects, any other person may be designated as a Qualified Person by
5 order of this Court, after notice and opportunity to be heard to all parties.

6 5. Prior to the disclosure of any “Confidential Information” to any expert under Paragraph
7 4(c), counsel for the Party seeking to make the disclosure shall: (i) deliver a copy of this Protective
8 Order as entered to such person, explain its terms to such person, and secure the signature of such person
9 on a written undertaking in the form attached hereto as Exhibit A, and (ii) transmit by facsimile and mail
10 to counsel for the other Parties a copy of the signed Exhibit A, accompanied by a curriculum vitae, at
11 least ten (10) calendar days before any “Confidential Information” designated under this Protective
12 Order is to be disclosed to the signator. The curriculum vitae should identify the general area(s) of
13 expertise of the expert, provide a brief job history, specify all employment, expert or consulting
14 engagements by the expert within the past five (5) years, and state all present or prior relationships
15 between the expert and any entity directly or indirectly involved in this litigation or providing an
16 indemnity to any such entity, its subsidiaries or its affiliates. Any Party may object to the proposed
17 disclosure to an expert within the ten (10) calendar day period following the transmittal of Exhibit A and
18 the curriculum vitae, by stating specifically in writing the reasons why the Party believes such expert
19 should not receive designated “Confidential Information.” If during that ten (10) calendar day period a
20 Party makes such a written objection, there shall be no disclosure of “Confidential Information” to the
21 expert absent mutual agreement of the Parties, waiver of the objection as stated below, or further order
22 of the Court. After a Party objects to the proposed disclosure to an expert, the objecting Party shall
23 move, by noticed motion or by ex parte application, for an order that disclosure not be made to such
24 expert within five (5) business days following the date that the objection is made, or the Party’s
25 objection shall be deemed waived and disclosure may be made to the expert. The burden shall be on the
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1 objecting Party to establish why the disclosure should not be made. Each Party shall maintain a file of
2 all such signed copies of Exhibit A. However, it shall not be necessary for administrative, secretarial or
3 clerical personnel working for such Qualified Person to sign a written undertaking.

4 6. (a) Documents produced in this action may be designated by any party or parties as
5 “Confidential” by marking each page of the document(s) with the designation “Confidential.”

6 (b) In lieu of marking the original of a document, if the original is not produced, the
7 designating party may mark the copies that are produced or exchanged. Originals shall be preserved for
8 inspection.

9 (c) If the document is not in paper form, the producing person or entity shall use other
10 such reasonable means as necessary to identify clearly the document or information as “Confidential.”

11 7. Discovery responses or other litigation materials may be designated by any party or
12 parties as “Confidential” by marking each page of the response with the designation “Confidential.”

13 8. The designation of information disclosed during a deposition as “Confidential” shall be
14 made either by a statement on the record at the deposition or within twenty (20) calendar days after
15 receipt by counsel of a copy of the deposition transcript. Such designation will be applied to only those
16 portions of the deposition transcript that include a specific question and response or series of questions
17 and responses containing “Confidential Information.” The deposition transcript shall be printed in
18 consecutive pages (whether or not some pages are designated as “Confidential”) with a marking on the
19 cover of the deposition transcript indicating the “Confidential” designation contained therein. Unless
20 previously designated otherwise, all deposition transcripts shall be treated as “Confidential” in their
21 entirety prior to the end of the twenty (20) calendar day period following receipt by counsel of a copy of
22 the deposition transcript.
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25 9. “Confidential Information” shall not be disclosed or made available by the receiving
26 party to persons other than Qualified Persons except that nothing herein is intended to prevent
27 individuals who are in-house counsel or a member of the professional legal department of the Parties
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1 from having access to pleadings, briefs and exhibits or declarations filed with the Court and expert
2 reports, including exhibits that are designated as “Confidential.”

3 10. (a) Documents to be inspected shall be treated as “Confidential” although such
4 documents need not be marked as “Confidential” prior to inspection. At the time of copying for the
5 receiving parties, any documents containing “Confidential Information” shall be stamped prominently
6 “Confidential” by the producing party.

7 (b) Nothing herein shall prevent disclosure beyond the terms of this Order if each party
8 designating the information as “Confidential” consents to such disclosure or if the Court, after notice to
9 all effected parties, orders such disclosures. Nothing herein shall prevent any counsel of record from
10 utilizing “Confidential Information” in the examination or cross- examination of any person who is
11 indicated on the document as being an author, source or recipient of the “Confidential Information,”
12 irrespective of which party produced such information. Nothing herein shall prevent any counsel of
13 record from utilizing “Confidential Information” in the examination or cross-examination of any person
14 who is a current or former officer, director or employee of the party so designating the information as
15 “Confidential” or of the party that produced the information or of a related entity.

17 11. If a party inadvertently discloses any document or thing containing information that it
18 deems confidential without designating it as “Confidential,” the disclosing party shall promptly upon
19 discovery of such inadvertent disclosure inform the receiving party in writing, and the receiving party
20 and all Qualified Persons possessing such information shall thereafter treat the information as
21 “Confidential” under this Order. To the extent such information may have been disclosed to persons
22 other than Qualified Persons described in this document, the receiving party shall make every reasonable
23 effort to retrieve the information promptly from such persons and to avoid any further disclosure to and
24 by such persons.

26 12. A party shall not be obligated to challenge the propriety of a designation as
27 “Confidential” at the time made, and a failure to do so shall not preclude a subsequent challenge thereto.

1 Nor will the failure to object be construed as an admission that any particular “Confidential
2 Information” contains or reflects currently valuable trade secrets or confidential commercial
3 information. In the event that any party to this litigation disagrees at any stage of these proceedings with
4 the designation by the designating party of any information as “Confidential,” or the designation of any
5 person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an
6 informal basis, such as production of redacted copies. If the parties are unsuccessful in informally
7 resolving any disputes regarding the designation of any document or information as “Confidential,” the
8 Court shall resolve all such disputes. It shall be the burden of the party making any designation to
9 establish that the information so designated is “Confidential” within the meaning of this Protective
10 Order. The “Confidential Information” that is the subject of the dispute shall be treated as originally
11 designated pending resolution of the dispute.
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13 13. The parties may, by written stipulation filed and approved by the Court, amend this
14 Order, and any party may seek an order of this Court modifying this Protective Order. The parties agree
15 to meet and confer prior to seeking to modify this Protective Order. In addition, the Court may modify
16 this Protective Order in the interest of justice or otherwise at the Court’s discretion.
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18 14. In the event a party wishes to use any “Confidential Information” in any affidavits, briefs,
19 memoranda of law, or other papers filed with the Court in this litigation, such “Confidential
20 Information” used therein shall be filed under seal with the Court. In addition to placing documents in a
21 sealed envelope with instructions that the document is filed pursuant to the Stipulated Protective Order
22 and that the envelope is not to be opened absent further order of the Court, the envelope should be
23 labeled to identify the title of the case, the case number, and the title of the document.
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25 15. The Clerk of this Court is directed to maintain under seal all documents and transcripts of
26 deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal
27 with the Court in this litigation that have been designated, in whole or in part, as “Confidential” by a
28 party to this action.

1 16. If a Party intends to offer into evidence or otherwise disclose in open court any
2 “Confidential Information” designated by another person or entity, counsel for such Party shall notify
3 the designating person or entity that the Party intends to disclose “Confidential Information” in open
4 court prior to the disclosure, so that the designating person or entity may confer with the Court
5 concerning appropriate procedures for protecting its “Confidential Information.”

6 17. In the event any person or party that has possession, custody, or control of any
7 information designated as “Confidential” pursuant to the terms of this Protective Order receives a
8 subpoena or other process or order to produce such information, such person or party shall notify by
9 mail within five (5) business days of the Party’s receipt of the request, the counsel for the party or
10 persons claiming confidential treatment of the documents sought by such subpoenas or other process or
11 order, shall furnish such counsel with a copy of said subpoena or other process or order, and shall
12 cooperate with respect to any procedure sought to be pursued by the party whose interests may be
13 affected. The party asserting the “Confidential” treatment shall have the burden of defending against
14 such subpoena, process or order. The person or party receiving the subpoena or process or order shall be
15 entitled to comply with it except: (a) to the extent the party asserting the “Confidential” treatment is
16 successful in obtaining an order modifying or quashing it; and (b) in complying with the process or
17 order shall, at a minimum, seek to obtain “Confidential” treatment of the “Confidential Information”
18 before producing it in the other proceeding or action.
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20 18. If the discovery process calls for the production of information that a Party or Non-Party
21 does not wish to produce because the Party or Non-Party believes its disclosure would breach an
22 agreement with another person or entity to maintain such information in confidence, the disclosing Party
23 or Non-Party promptly shall give written notice to the other person or entity that its information is
24 subject to discovery in this litigation, and shall provide such person or entity with a copy of this
25 Protective Order. When such written notice is given to the person or entity, the disclosing Party or Non-
26 Party will advise the potential receiving Party that such notice has been given. The person or entity
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1 whose information may be subject to discovery shall have ten (10) business days from receipt of the
2 written notice in which to seek relief from the Court, if the person or entity so desires. If the ten (10)
3 business days elapse without the person or entity seeking relief from the Court, the requested
4 information shall be produced in accordance with the terms of this Protective Order.

5 19. In the event that additional persons or entities become Parties, none of such Parties'
6 counsel, experts or consultants retained to assist said counsel, shall have access to "Confidential
7 Information" produced by or obtained from any other producing person or entity until said Party has
8 executed and filed with the Court its agreement to be fully bound by this Protective Order.

9 20. This Protective Order shall apply to the parties and any non-party from whom discovery
10 may be sought and who desires protection for the discovery sought. Thus, any non- party requested or
11 required to produce or disclose information in this proceeding, through subpoena or otherwise, may
12 designate such information pursuant to the terms of this Protective Order.

13 21. (a) Nothing herein requires disclosure of information, documents or things which the
14 disclosing entity contends is protected from disclosure by the attorney-client privilege or the work-
15 product exception. Nothing herein shall preclude any party from moving this Court for an order
16 directing the disclosure of such information, documents or things.

17 (b) In the event that any privileged attorney-client or work product documents or things
18 are inadvertently produced for inspection and/or provided, the disclosing party shall identify such
19 documents or things within five (5) days of when it discovers that the privileged materials were
20 inadvertently produced for inspection and/or provided, and either (1) copies shall not be provided, or (2)
21 if copies have already been provided, all copies in the receiving party's possession shall be promptly
22 returned (and not relied upon) by the receiving party. Nothing in this paragraph shall prevent the
23 receiving party from contending that the identified materials are not privileged, that the material was not
24 inadvertently produced, or that privilege was waived for reasons other than mere inadvertent production
25 of the material.
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22. Within ninety (90) days after conclusion of this litigation and any and all appeals thereof, any document and all reproductions of "Confidential" documents produced by a party that are in the possession of any Qualified Person shall be returned to the producing party or, with the consent of the producing party, destroyed. If destroyed, counsel for the receiving party shall certify to counsel for the producing party compliance with this paragraph within fourteen (14) calendar days of such destruction. Outside counsel for each party may maintain in its files one copy of all material produced as well as all materials filed with or otherwise presented to the Court, deposition and trial transcripts, and work product (regardless of whether such materials contain or refer to "Confidential" materials). If counsel retains such materials, the materials which contain Confidential Information shall be accessible only by Qualified Persons defined in paragraph 4(b) above. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation including any subsequent appeals or later proceedings, except that (a) there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders. The Court shall retain jurisdiction to enforce the performance of said obligations.

23. (a) At the election of the Producing Party, a Receiving Party's access to a Producing Party's discoverable source code may be limited to inspection of the code at a secured facility provided by the Producing Party. Such inspection may be conducted only by persons identified in advance by the Receiving Party on a list of "Qualified Inspecting Personnel" which may include:

- (1) the Receiving Party's Outside Counsel of record in this action; and
- (2) up to three Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order (Exhibit A) and who have been approved pursuant to the "Procedures for Approving Disclosure of 'CONFIDENTIAL' information of Items to 'Experts'" as set forth in paragraph 5.

1 (b) The following provisions relate to Synopsys' provision of access to the Source
2 Code for versions of its commercial products:

3 (1) Synopsys will make available a closed room at its facility in Bethesda,
4 Maryland for use by Ricoh's Qualified Inspecting Personnel. The room will be set aside
5 for the exclusive use of Ricoh's Qualified Inspecting Personnel and will not be used by
6 Synopsys or any other party when Ricoh's Qualified Inspecting Personnel are not present.
7 The room will be available for a minimum of twelve weeks. After twelve weeks, and
8 after consultation with Ricoh, Synopsys may close the facility pursuant to the procedures
9 described in paragraph 4 below. If the facility is closed, Synopsys agrees to make the
10 source code available for inspection under similar procedures at another date prior to the
11 close of expert discovery.

12 (2) Synopsys will equip the closed room with a private phone if a phone jack
13 is already available in the room, a stand-alone, non-networked, computer and high-speed
14 printer. The computer will be loaded with copies of the source code to be produced and
15 utilities required to review the code. The source code shall include the code which is
16 used by Synopsys and no notes, comments, or any segments shall be removed before
17 being made available. The computer will be equipped with the text editors available in a
18 standard Unix distribution, suitable for use in editing the source code. Synopsys will
19 assist Ricoh in loading software that Ricoh may require for analysis of the source code.
20 The computer shall also be loaded with a complete distribution of the Synopsys software
21 that is fully operable and executable.

22 (3) Ricoh may print copies of a reasonable subset of the source code for the
23 Synopsys products at issue. Any printing done at the secure facility will be done
24 exclusively on paper supplied by Synopsys. Synopsys may elect to place preprinted
25 confidential designations on the margins of the paper. Ricoh's Qualified Inspecting
26 Personnel are not to bring blank paper into the closed room except for the purpose of
27 making handwritten notes. Synopsys will initially supply Ricoh with 5,000 pages of
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1 paper for use with the printer. This figure is based on the estimate that 5,000 pages should
2 be sufficient to print approximately 5% of the source code for Design Compiler. If at any
3 time, Ricoh believes that additional printing and paper is required, Ricoh may submit
4 additional requests for paper to Synopsys with a general statement of the basis of the
5 request. Synopsys will respond within one week to any such request. If the parties are
6 unable to come to agreement after conferral, the matter may be presented to the Court. In
7 evaluating requests for paper, the relevant standard to be applied is that Ricoh should be
8 allowed to print hardcopies of a reasonable subset of the Synopsys source code and that
9 what is reasonable shall be evaluated in light of relevance of the code to Ricoh's
10 allegations and Synopsys' interest in preventing release in hardcopy of more than a
11 fraction of its source code.

12 (4) Ricoh will be permitted to send individuals from the list of Qualified
13 Inspecting Personnel to participate in and/or witness the closing of the secured facility.
14 Before closing of the facility, Ricoh's representatives may provide a list of procedures
15 that they wish to perform to ensure that any electronic record of their use of the machine
16 has been erased.

17 (c) The Receiving Party will provide the Producing Party with a copy of its list of
18 "Qualified Inspecting Personnel" no later than 5 business days before any person on the list attempts to
19 access the secured facility. The Receiving Party may revise the list to add or remove individuals,
20 provided that no more than a total of three Experts are ever provided with access to the source code
21 during the entire course of the litigation absent an agreement by the parties or a Court Order to expand
22 this number.

23 (d) Any notes taken or any other information created by Outside Counsel or the
24 experts of the Receiving Party at or based on any inspection of the source code shall be treated as
25 "CONFIDENTIAL" under this Protective Order.

26 24. This Order shall not bar any attorney herein in the course of rendering advice to his client
27 with respect to this litigation from conveying to any party client his evaluation in a general way of
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"Confidential Information" produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any 'Confidential Information' produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

25. The Court shall retain jurisdiction to enforce the terms of this order for six (6) months after the final termination of this action.

Dated: March 23, 2004

HOWREY SIMON ARNOLD & WHITE, LLP

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Dated: March 23, 2004

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ORDER

SO ORDERED this _____ day of _____, 2004.

Magistrate Judge Edward M. Chen

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

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Defendant.

CASE NO. C03-2289-MJJ (EMC)

UNDERTAKING

My name is _____. I hereby acknowledge that I have been provided with a copy of, have read, and am fully familiar with, the terms of the Stipulated Protective Order entered in this action on _____, 2004. I agree to be bound by, and to comply fully with, the terms of the Stipulated Protective Order. I agree not to disclose or disseminate any "Confidential Information," as defined by the Stipulated Protective Order, except as permitted therein.

I hereby submit myself to the jurisdiction of the United States District Court for the Northern District of California, San Francisco Division in connection with the enforcement of the Stipulated Protective Order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____, 2004.
